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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/087,750	03/05/2002	Michael A. Weimer	271-101P-WLK	7011

7590 11/17/2004

LAW OFFICE OF WILLIAM L. KLIMA, P.C.  
P.O. Box 2855  
Stafford, VA 22555-2855

EXAMINER

PICKETT, JOHN G

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/087,750

**Applicant(s)**

WEIMER, MICHAEL A.

**Examiner**

Gregory Pickett

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 12-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 12-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 March 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. This Office action acknowledges the applicant's Amendment submitted 27 May 2004. Claims 1-10, and 12-23 are pending in the application. Claim 11 has been cancelled.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### *Drawings*

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the hood and trunk as a closure for a parallelepiped shaped cooler device of claims 12, and 14-17; the exaggerated features of claims 22 and 23; and the handle portion connected to the lid of claim 23 must be shown or the feature(s) canceled from the claim(s). **No new matter should be entered.** Currently, only Figure 8 shows a chest of parallelepiped shape, and Figure 8 does not show the features of the above-mentioned claims. All other Figures presented by the applicant show a chest with an elongated rear end, which is not a parallelepiped shape.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure

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number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claim 23 is rejected under 35 U.S.C. 112, 1<sup>st</sup> paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The handle connected to the lid closure is deemed **new matter**. The handle connected to the lid portion was not presented in the originally filed specification or

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drawings. Further, the handle connected to the closure is not enabled by the specification as originally presented, examiner questions how the closure portion is retained in a closed position with the weight of the handle tending to open the closure.

5. Claims 19 and 20 are rejected under 35 U.S.C. 112, 2<sup>nd</sup> paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 19 and 20, the phrase "any other type of motor vehicle" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "any other type of motor vehicle"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

#### ***Claim Rejections - 35 USC § 103***

6. Claims 1-8, 10, 12-19, 21, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moffett, III et al (Des. 414,987; hereinafter Moffett) in view of Hartman (Des. 362,788).

Regarding claim 1, Moffett discloses a portable cooler chest with a parallelepiped configuration and at least one storage compartment with an opening, a lid, and at least one pair of wheels (see Figure 1).

Moffett lacks, or does not expressly disclose, operational wheels or the chest and wheels configured to visually simulate a motor vehicle.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the wheels of Moffett as operational in order to enable easy transport of the cooler. The drawings are to be interpreted as to what they would suggest to one of ordinary skill in the art MPEP § 2125.

As to the visual simulation, Hartman discloses that it was known in the art at the time the invention was made to alter the shape of a cooler into the shape of a car. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the shape of the cooler of Moffett to simulate a motor vehicle as suggested by Hartman, in order to visually appeal to car enthusiasts. Such a modification would entail a mere change in shape. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47. A change in aesthetic (ornamental) design generally will not support patentability. *In re Seid*, 73 USPQ 431.

As to claim 2, Moffett discloses a handle (see Figure 4).

As to claims 3 and 4, Moffett discloses hand grips (see Figures 2 and 3).

As to claims 5, 6, and 7, Hartman discloses a sculptured shape (see Figure 1).

As to claim 8, Moffett discloses four wheels.

As to claims 10 and 12, Hartman discloses an operational hood as a closure.

As to claims 13-17, Hartman discloses an operational hood. Moffett discloses a plurality of compartments and separate closures for the compartments. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide an operational hood and an operational trunk in order to separately access the

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separate compartments while maintaining the visual appearance as suggested by Hartman.

As to claim 18, Moffett discloses a handle, which is an attachment.

As to claim 19, Moffett-Hartman discloses an automobile shape.

As to claims 21 and 22, the scale and proportionality of the shape is deemed an obvious matter of design choice. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955). A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

7. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moffett-Hartman as applied to claim 1 above, and further in view of Teel (US 6,076,298).

Moffett-Hartman discloses the claimed invention except for the wheel wells.

Teel discloses wheel wells. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the cooler of Moffett-Hartman with wheel wells in order to limit overall width of the cooler. The examiner notes that most automobile designs include a wheel well.

8. Claims 18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moffett-Hartman as applied to claim 1 above, and further in view of Wilson (US 6,264,216).

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Moffett-Hartman discloses the claimed invention except for the trailer attachment.

Wilson discloses a trailer attachment 14 to a cooler 12. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the cooler of Moffett-Hartman with a trailer attachment as taught by Wilson in order to retain a multiplicity of items.

9. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moffett-Hartman, as applied to claims 13-17 above, and in further view of Arel (US 3,081,394).

Moffett-Hartman discloses the claimed invention except for the handle attached to the lid.

Arel discloses a handle 20 attached to the lid 2 such that lid 2 pivots open upon pressing down on handle 20. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the lid of Moffett-Hartman with a handle attached to the lid as taught by Arel in order to assist the user in opening the lid.

### ***Response to Arguments***

10. Applicant's arguments with respect to claims 1-10 and 12-23 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP



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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 703-305-8321. The examiner can normally be reached on Mon-Fri, 9:30 AM - 6:00 PM.

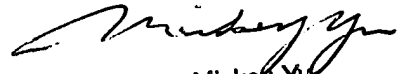
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 703-308-2672. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Greg Pickett  
Examiner  
4 November 2004



Mickey Yu  
Supervisory Patent Examiner  
Group 3700